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No. 92-1605

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1992

PATRICK G. WOOSLEY,
Petitioner,

VS.

STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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I

AMICUS CURIAE'S INTEREST IN ACTION

Having requested and received the written consent of all parties to file this brief, the Association of California Car Club respectfully submits this brief as amicus curiae in support of the petition for writ of certiorari, pursuant to Rule 36 of this Court. Consents have been filed with the Clerk of the Court.

Amicus curiae is the Association of California Car Clubs (ACCC) which was also amicus curiae for petitioner in the review had before the California Supreme Court ("California Court") in this matter.

The ACCC represents over 11,000 automobile enthusiasts throughout the State, many of whom are members of the subclasses as decreed by the trial court herein. ACCC originally abstained from involving itself in this litigation, having no reason to believe that the interests of its members were not being adequately being protected by California law allowing class claims and actions for tax refunds, and having reasonably relied on that well-established case law allowing class claims for refund. However, the California Supreme Court's action in this matter has totally undermined ACCC's reasonable reliance. ACCC's participation in this matter is necessitated due to the severe effect that the Supreme Court ruling has had upon members of ACCC. Particularly, ACCC members are the ones that are being summarily deprived of property without due process of law, and further suffered the violation of their constitutional right to engage in interstate commerce.

ACCC members were particularly shortchanged by the action of the California Supreme Court inasmuch as there were numerous cases at the appellate level which the California Court overturned *sua sponte,* which specifically held that class-action suits for tax refund were proper in California. Now, after the statute of limitations has run on numerous claims, the California Court has decreed retroactively that class claims were not maintainable, on the untenable grounds that the California *Vehicle Code* did not allow for such a class claim. Amicus will argue below that the California Court's construction of, and focus on, the California *Vehicle Code,* was entirely improper and pretextual because the Court totally ignored 1) that California taxpayers' civil rights were tortious being violated, and accordingly as a matter of California law a class action was maintainable, and 2) that if in fact California law did not provide such class relief, it would be violative of due process of law as imposing an impossible burden upon class members in order to assert their rights and gain access to the court to vindicate their rights.

II

ARGUMENTS

A. THE CALIFORNIA SUPREME COURT'S DECISION IS UNTENABLE BECAUSE IT TOTALLY IGNORED THE FACT THAT THE UNCONSTITUTIONAL TAX CONSTITUTED A TORT TOWARDS THE MEMBERS OF THE CLASS, AND THAT WOOSLEY, ON BEHALF OF THE CLASS, FILED THE APPROPRIATE CLASS CLAIM PURSUANT TO PRESCRIBED CALIFORNIA LAW

Both the trial court, the Court of Appeals and the California Supreme Court found that there was class discrimination by virtue of violation of the interstate commerce clause. (Appendix to petition 32a, 68a, 140a-143a).

Indeed, the trial court specifically found and certified that there was a "discrimination class." (Appendix to petition 220a). Manifestly, under California law, action by the State or its agency which is unconstitutional in nature constitutes a tort, for which the state provides a remedy. *Fenton v. Groveland Community Service District* 135 Cal.App.3d 797, 803 (1982). Thus, under California law, the unconstitutional taxation committed by the Sate constituted a tort against Woosley and all member of the class.

California *Government Code* § 905.2, provides in relevant part:

> "There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the State: . . . (c) For money or damages (1) on express contract, or (2) for an injury for which the State is liable."

According, petitioner Woosley, on his own behalf and those similar situated, submitted a claim that conformed to the requirements of the applicable *Government Code* § 910 (Appendix D to petition, pages 122a-123a). Under that section, a class claim can be maintained for tortious conduct of the State or its agents. *City of San Jose v. Superior Court* 12 Cal.3d 447 (1974). Thus,

Woosley's claim was proper as to protect the interests of all class members so as to assure them a remedy for the State's tortious acts of unconstitutional taxation.

Notwithstanding Woosley's clear compliance with the requirements of California *Government Code* § 910, and notwithstanding the Court's conclusion that the State had violated the commerce clause, the California Court completely ignored the tort aspect of this case and Woosley's compliance with the State's tort claims statute, thereby circumventing the whole issue completely and chose instead to dwell upon an issue that it *thought* would save the State's fisc, i.e. a novel and narrow reading of *Vehicle Code* § 42231, which as set forth below, also constitutes and untenable State ground for denying relief to class members of the State's discriminatory conduct.

Thus, in sum, Woosley properly submitted a class claim for the tortious acts of the State, and the California Court's refusal to acknowledge Woosley's complete adherence to the applicable State claims procedure, demonstrates that the Court's decision was totally pretextual so as to allow the State to escape liability for its unconstitutional acts.

B. THE STRUCTURE AND EVOLUTION OF THE STATUTES AND THEIR LEGISLATIVE HISTORY SHOW THAT THE CALIFORNIA SUPREME COURT'S RELIANCE ON VEHICLE CODE § 42231 IS AN UNTENABLE STATE GROUND FOR DENYING RELIEF TO THE VICTIMS OF DISCRIMINATION AGAINST INTERSTATE COMMERCE

The petition for Certiorari did not fully explore one of the fatally defective links in the California Supreme Court's rationale for using the *Vehicle Code* to deny relief to admitted victims of discrimination against interstate commerce. For the California Supreme Court's state ground for overturning a long and unbroken line of cases validating class claims in order to avoid eliminating the vehicle license fee's discrimination against interstate commerce to be a tenable ground, all of the Court's premises must be true; however, each of them is false. The premises are: (1) The voters of the state intended to engraft the principle of

strictissimi juris into the California Constitution when they approved the redrafting of Article XIII in 1974 to make it more readable, (2) *Vehicle Code* § 42231 applies to the refund of vehicle license fees, and (3) § 42231's reference to an agent indicated that the legislature did not intend to allow class claims for refund. The Petition concentrated on showing failure of the first and third requirements; however, this brief demonstrates that California Court's logic also fails the second prong of the analysis. Failure of any prong makes the California Court's denial of relief untenable, and the following analysis completely undermines the second prong of the California Court's *sua sponte* analysis.

ACCC wishes to share with this Court some information which completely undermines the second and third prongs of the California Court's *sua sponte* analysis.

It is fundamental to the analysis of the California vehicle registration and licensing systems to recognize that registration fees and license fees are two completely different fees imposed by completely different codes of the California statutes. *California v. Buzard* 382 U.S. 386, 390 fn. 5, 393-394, 396, 15 L.Ed.2d 436, 86 S.Ct. 478 (1966); *Buzard v. Justice Court*, 198 Cal.App.2d 814, 816-187 (1962). The vehicle registration fee, and a number of related fees are imposed by the *Vehicle Code*. In contrast, the vehicle license fee is in lieu of a personal property tax (*Revenue and Taxation Code* § 10758), is imposed by the *Revenue and Taxation Code*, and has its own collection and refund provisions (§§ 10851 to 10901). Each of these is discussed in detail below.

1. THE STRUCTURE OF THE VEHICLE LICENSE FEE STATUTES SHOWS THAT THE LEGISLATURE DID NOT INTEND FOR VEHICLE CODE § 42231 TO RESTRICT THE REFUND RIGHTS OF PAYERS OF VEHICLE LICENSE FEES

The *Revenue and Taxation Code*'s refund provision specifically refers to the "license fee" imposed by "this part" of the *Revenue and Taxation Code* (§ 10901). § 10901 is in Part 5, entitled "Vehicle License Fees". Further, § 10901 is in Chapter 3 thereof, entitled "Collection and Refunds". § 10901 does not preclude class claims for refunds. The State does not apply the *Vehicle*

Code collection sections to vehicle license fees. *California v. Buzard, supra*; *Buzard v. Justice Court, supra*. § 10901 contains the essential elements of a refund section and makes no reference to the *Vehicle Code*, so there is no reason in law or fact to look to the *Vehicle Code* for barriers to the return of unconstitutional vehicle license fees.

The legislature has several times recognized that refunds of registration fees are governed by different statutes than those governing refunds of vehicle license fees, although the Legislature has generally kept the statute of limitations the same. For instance, 1961 California Statutes Chapter 20 amended *Revenue and Taxation Code* § 10901 and *Vehicle Code* §§ 42231, 42232 and 42234 as part of the same short Assembly bill.

2. THE EVOLUTION OF VEHICLE CODE § 42231 DEMONSTRATES THAT IT WAS NOT MEANT TO LIMIT REFUNDS OF VEHICLE LICENSE FEES

The key ancestor to *Vehicle Code* § 42231 is former *Vehicle Code* § 383.1, enacted as part of Assembly Bill 1259 (Chapter 1250, Statutes of 1945). It was part of bill which clarified certain fees on the transfer of vehicle *registration* and imposed penalties on certain late *registrations*. Its introductory clause read:

> "Whenever application is made by any person for the registration or transfer of *registration* of a vehicle or for any other privilege specified in this [Vehicle] code and the application is accompanied by any fee. . . ." [Emphasis added.]

This language shows that the section was not meant to apply to vehicle license fees.

First, the *license fee* (which is at issue in this action) was and is imposed by the *Revenue and Taxation Code*, not the *Vehicle Code*; therefore, it is not included within the expression "any other privilege specified in this [Vehicle] code." In contrast, the *registration fee* is and was imposed by the *Vehicle Code*. See *California v. Buzard, supra*; *Buzard v. Justice Court, supra*. In context, the fact that payment of a license fee might physically have accompanied an application for registration does not mean that the section restricted a tax imposed by a different code and

for which the other code specified a refund procedure. The fact that the license fee often accompanies payment of registration fee is the only face friendly to the California Supreme Court's *sua sponte* interpretation, out of a Rose Bowl full of unfriendly faces. This is not sound statutory construction. See, *Conroy v. Aniskoff* (March 31, 1993) ____ U.S. ____, 113 S.Ct. 1562, ____, 61 USLW 4301, ____ (Scalia, J. concurring in judgment). A tenable construction has to look at all of the generally accepted principles of interpretation, not just at the principle which superficially supports the California Court's goal of exempting the State of liability for its wrongful acts.

Second, subdivision (d) of the section provided for return of money to the DMV from the state controller if the amount which DMV was to refund had been turned over by the DMV to the state treasury to the credit of the Motor Vehicle Support Fund or the Motor Vehicle Fund. Said funds did not receive money from the vehicle license fee; vehicle license fees went to the Motor Vehicle License Fee Fund. *Revenue and Taxation Code* § 110001.

Third, subdivision (e) was a legislative appropriation to provide the money for refunds of fees:

> "collected under this [Vehicle] code and the procedure herein prescribed shall be deemed a compliance with the requirements of the Political Code of this State in reference to the refund of excessive or erroneous fees or penalties paid to the Department of Motor Vehicles."

It is untenable logic for the section to make an appropriation only for fees imposed by the Vehicle Code if it was also the intention to apply the section to a fee imposed under the *Revenue and Taxation Code*. The reference to the Political Code (now called the Government Code) suggests that the Legislature did not intend to impose tougher restrictions on return of fees under the *Vehicle Code* than the requirements of what is now the Government Code. This analysis is confirmed by the legislative history discussed below.

The only other significant step in the evolution of the statute (its redrafting in 1954 to the present Vehicle Code section) was

advertised as a non-substantive redrafting of the code as demonstrated below.

3. THE LEGISLATIVE HISTORY OF VEHICLE CODE § 42231 AND ITS PREDECESSOR CONFIRM THAT THE LEGISLATURE DID NOT INTEND FOR § 42231 TO RESTRICT THE REFUND OF VEHICLE LICENSE FEES

All fees referred to in the legislative history of *Vehicle Code* § 42231 and its predecessor are fees imposed by the *Vehicle Code*. For instance, the letter from the Director of the Department of Motor Vehicles to then Governor Earl Warren describing the bill and recommending its passage only discussed fees imposed by the *Vehicle Code* on the transfer of registration and penalties for late application for special plates (also covered by the *Vehicle Code*). It said that section 383.1 "enlarges the grounds upon which a refund may be obtained. . . ." The DMV Director also said, "It is assumed that this section means that when the Division of Registration [of the DMV] finds that a fee has been paid in error, they may make the refund without application." The analysis of the Automobile Club of Southern California, upon which the Governor's staff relied, described the procedure as being "consistent with previous Political Code sections relating to refund of fees erroneously collected by other departments." (Appendix A, page 1a) The California Court has turned a provision intended to benefit people who overpaid fees imposed by the *Vehicle Code* into a barrier to the elimination of discrimination against interstate commerce by the *Revenue and Taxation Code*.

The legislative history of the redrafting of former *Vehicle Code* § 383.1 into § 42231 shows the absence of any intent to expand coverage from fees imposed by the *Vehicle Code* to a fee imposed by the *Revenue and Taxation Code*.

4. THE CALIFORNIA COURT'S RELIANCE ON DICTA IN *PIAZZA PROPERTIES, LTD. V. DEPARTMENT OF MOTOR VEHICLES* IS UNTENABLE

The California Court's reliance on *Piazza Properties, Ltd. v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 622, demonstrates the danger of a court *sua sponte* and without notice

relying on novel theories not briefed by the parties. The California Court gave no indication prior to its decision that it was considering relying on the *Vehicle Code* to limit refunds of fees imposed by the *Revenue and Taxation Code*. Had the California Court allowed the adversary process to work, for the class members herein to have a meaningful hearing on the point, it would have been clear to the court that *Piazza* is not on point. The holding of *Piazza* is that a statute of limitations applicable to the agency responsible for collecting a tax is also applicable to the state itself. The court's reference to *Vehicle Code* § 42231 rather than *Revenue and Taxation Code* § 10901 was irrelevant and harmless error because both sections contain a 3-year statute of limitations. The Court neither cited *Revenue and Taxation Code* § 10901 nor explained why it did not apply despite the section specifically saying that it applied to vehicle license fees. The Court's analysis ignored the unambiguous language of § 10901 and made § 10901 surplusage. And surplusages are frowned upon. *City and County of San Francisco v. Farrell* (1989) 209 Cal.App.3d 732, 738.

III

CONCLUSION

In sum, the California Supreme Court has ignored the reasonable and viable claims methods provided by California statute and chosen instead to place an impossible hurdle in the way of victimized taxpayers by making it absolutely economically unfeasible to seek redress for the intentional wrongful acts of the State and its violation of the federal Constitution. Here, the California Court chose a statutory scheme that is clearly not reasonably related to any State interest of such an overriding nature as to overcome the paramount interest of the Supremacy Clause and the enforcement of the Commerce Clause.

The State of California should not be able to escape liability for its violation of the Commerce Clause on the flimsy grounds of alleged non-compliance to a statute that serves no other purpose than to perpetuate the State's illegal unconstitutional activity, and at the same time disregard a State statutory scheme that would clearly serve to benefit justifiable interests of the State in providing for a systematic claim procedure, and that would assure victimized taxpayers appropriate opportunity for redress of the wrongs foisted upon them. It is submitted that the proper statutory scheme applicable here is either that found in *Government Code* § 910, or *Revenue and Taxation Code* § 10901 both of which were fully and completely conformed to by petitioner Woosley on behalf of the class. Any other pretext asserted by the State to deny this class action for unconstitutional taxation is an untenable State ground.

DATED: May 3, 1993

Respectfully submitted,

By: /s/ Frear Stephen Schmid
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Association of Calfornia
Car Clubs

APPENDIX A

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EXPLANATION OF ASSEMBLY BILL NO. 1259
(As amended April 9, 1945)

This bill relates to the fees imposed for transfer of ownership or any interest in a motor vehicle. The amendments clarify and simplify the statements in reference to payment of transfer fees. For example, as amended only one dollar transfer fee will be payable in the event an application is presented showing a transfer by both the owner and legal owner.

Another amendment provides that the penalty for delinquency in respect to any transfer shall be $1.00 and shall apply only to the last transfer. This will simplify the work of clerks of the department in determining the penalty.

The bill adds a new section to the Vehicle Code, 383.1, to set forth a procedure to be followed in respect to refund of fees erroneously collected and not legally due. The procedure is consistent with previous Political Code sections relating to refund of fees erroneously collected by other departments.

/s/ J. Allen Davis